



Ontario: Annual Statutes

1990

c 20 Retail Sales Tax Amendment Act, 1990

Ontario

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Bibliographic Citation

Retail Sales Tax Amendment Act, 1990, SO 1990, c 20

Repository Citation

Ontario (1990) "c 20 Retail Sales Tax Amendment Act, 1990," *Ontario: Annual Statutes*: Vol. 1990, Article 22.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1990/iss1/22

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CHAPTER 20

An Act to amend the Retail Sales Tax Act

Assented to December 20th, 1990

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause (ba) of paragraph 4 of section 1 of the *Retail Sales Tax Act*, as enacted by the Statutes of Ontario, 1989, chapter 15, section 1 and amended by 1989, chapter 38, section 1, is repealed and the following substituted:

R.S.O. 1980,
c. 454

(ba) the tax imposed pursuant to any provision of the *Excise Tax Act* (Canada), except the tax imposed by Part IX of that Act, or the *Excise Act* (Canada) in respect of the tangible personal property or the taxable service or the sale or acquisition of either of them.

R.S.C. 1985,
cc. E-15,
E-14

2.—(1) Subsection 2 (9) of the Act, as amended by the Statutes of Ontario, 1981, chapter 38, section 1 and 1983, chapter 27, section 2, is repealed and the following substituted:

(9) An amount paid under this Act as tax that is not payable as tax and that was not paid to discharge liability under an assessment made under this Act shall be refunded if application for the refund is made to the Minister within four years after the date of payment of the amount.

Application
for refund

(9a) Only one application may be made under subsection (9) in respect of the same amount.

Limitation

(9b) If the amount that is the subject of an application under subsection (9) was paid in the course of performing a contract and was repaid by another party to the contract, the amount may be refunded to the other party.

Refund to
contracting
party

(2) Subsection 2 (11) of the Act is amended by striking out "three" in the first line, in the eighth line and in the ninth line and substituting in each instance "four".

(3) Subsection 2 (12) of the Act is amended by striking out “three” in the fifth line and substituting “four”.

3. Section 2a of the Act, as enacted by the Statutes of Ontario, 1986, chapter 1, section 2, is repealed.

4.—(1) Subclause 2b (3) (b) (ii) of the Act, as enacted by the Statutes of Ontario, 1989, chapter 38, section 3, is amended by striking out “for a term of at least seven days” in the first and second lines.

(2) Subsection 2b (3) of the Act, as enacted by the Statutes of Ontario, 1989, chapter 38, section 3, is amended by adding the following clause:

- (d) despite clause (b), where the tangible personal property referred to in subclause (b) (ii) is ordinarily leased to different purchasers, each of whom will lease the tangible personal property for a period of less than thirty days, the tax imposed under subsection 2b (1) shall be apportioned among all purchasers who lease the tangible personal property during the period that a new pneumatic tire is attached thereto or in connection with which the tire has been supplied, in such manner as may be prescribed by the Minister.

5. Paragraph 45 of subsection 5 (1) of the Act, as re-enacted by the Statutes of Ontario, 1983, chapter 27, section 4, is repealed and the following substituted:

- 45. machinery, equipment or processing materials purchased for the use of a manufacturer, or for the use of a producer, to be used directly in the manufacture or production of tangible personal property or directly in, and exclusively for, the research or development by the manufacturer or producer of either,
 - (a) goods for manufacture or production by the manufacturer or producer or for the manufacture or production of others, or
 - (b) manufacturing or production processes for use by the manufacturer or producer or the use of others,

if the machinery, equipment or processing materials are prescribed by the Minister, but the exemption conferred by this paragraph does not apply to any

machinery or equipment used in any manner, process, industry, enterprise or by any person prescribed by the Minister as not entitled to the exemption conferred by this paragraph.

6.—(1) Subsection 12 (1) of the Act is repealed and the following substituted:

(1) For each twelve-month period during which tax is collected commencing on the 1st day of April, there may be paid to each vendor holding a valid and subsisting permit issued under section 3, the lesser of,

Compensation to vendors

(a) \$1,500; or

(b) the aggregate of,

(i) 5 per cent of the tax collected by the vendor in the period and shown in a return that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected is \$400 or more,

(ii) \$20 for each return with respect to tax collected by the vendor in the period that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected exceeds \$20 and is less than \$400, and

(iii) the tax collected by the vendor in the period and shown on a return that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected does not exceed \$20,

as compensation for the vendor's services in collecting and remitting the tax imposed by this Act and the vendor may deduct the compensation from the amount otherwise to be remitted to the Treasurer in accordance with section 11.

(2) Section 12 of the Act is amended by adding the following subsection:

(1a) There may be paid to each vendor holding a valid and subsisting permit issued under section 3 for the twelve-month period during which tax was collected commencing on the 1st day of April, 1990 and ending on the 31st day of March, 1991, the lesser of,

Transitional

- (a) \$1,100; or
- (b) the aggregate of.
 - (i) 5 per cent of the tax collected by the vendor in the period and shown in a return that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected is \$400 or more,
 - (ii) \$20 for each return with respect to the tax collected by the vendor in the period that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected exceeds \$20 and is less than \$400, and
 - (iii) the tax collected by the vendor in the period and shown on a return that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected does not exceed \$20,

as compensation for the vendor's services in collecting and remitting the tax imposed by this Act and the vendor may deduct such compensation from the amount otherwise to be remitted to the Treasurer in accordance with section 11.

7. Subsection 14 (2) of the Act, as enacted by the Statutes of Ontario, 1986, chapter 66, section 7, is repealed and the following substituted:

Records of
vendors of
taxable
services

(2) Every vendor of taxable services shall keep records of all purchases and sales made by the vendor of tangible personal property, and records of all purchases and sales made by the vendor of taxable services, whether for consumption, use or resale, and any failure to do so constitutes an offence under this Act.

8. Section 15 of the Act, as amended by the Statutes of Ontario, 1986, chapter 66, section 8, is repealed and the following substituted:

Confiden-
tiality

15.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or

- (b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings, Testimony

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections (1) and (2) do not apply in respect of, Exception

- (a) criminal proceedings under any Act of the Parliament of Canada;
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax under this Act.

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of this Act, Communication

- (a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law, information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b) allow another person employed by the Government of Ontario in the administration or enforcement of any law, to inspect or have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to the Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act. Reciprocal communication

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration Use of information

tion or enforcement of this Act or an Act that is administered or enforced by the person receiving the information, record or thing.

Idem

(7) The Minister may permit information or a copy of any record or thing obtained by or on behalf of the Minister for the purposes of this Act to be given to,

- (a) the person from whom the information, record or thing was obtained; or
- (b) any person,
 - (i) for the purpose of an objection or appeal that has been or may be taken by the person under this Act arising out of an assessment of tax under this Act in connection with which the information, record or thing was obtained, or
 - (ii) by whom an amount payable under this Act is payable or has been paid; or
- (c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Minister may permit information or a copy of any record or thing obtained by or on behalf of the Minister for the purposes of this Act to be given to any person employed by any government if,

- (a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and
- (b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Tax policy

(9) The Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act.

Offence

(10) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

9. Subsection 16 (3) of the Act is amended by striking out “three” in the second line and substituting “four”.

10. Subsection 17 (4) of the Act is amended by striking out “three” in the third line and in the twelfth line and substituting in each instance “four”.

11. Section 32 of the Act, as amended by the Statutes of Ontario, 1983, chapter 27, section 11, is repealed and the following substituted:

32.—(1) If on a particular date a debt as calculated under subsection (2) is payable by any person, the person shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of the debt from that date to the date the amount is received by the Minister. Interest

(2) The amount of the debt payable by a person under this Act at a particular date is the amount by which, Calculation

(a) the aggregate of,

- (i) all tax under this Act collectable by the person as a vendor or payable by the person as a purchaser before that date,
- (ii) all amounts or penalties or both assessed under this Act against the person at any time before that date, and
- (iii) the total of all amounts of interest charged under this section against the person in respect of a period of time ending before that date,

exceeds,

(b) the aggregate of,

- (i) the amount of all taxes remitted or paid by the person under this Act prior to that date, and
- (ii) the total of all amounts of interest credited to the person in respect of a period of time ending before that date.

Compounding (3) The interest under subsection (1) shall be computed and compounded daily or as otherwise prescribed by the Minister to the date on which it is paid.

12. Section 33 of the Act, as amended by the Statutes of Ontario, 1986, chapter 1, section 11, is repealed and the following substituted:

Overpayment **33.** If an amount in respect of an overpayment is refunded or applied on other liability or if by a decision of the Minister under section 22 or by a decision of a court, it is finally determined that the tax payable under this Act is less than the amount assessed in a notice of assessment under section 16, 16a or 17 to which objection was made or from which appeal was taken and the decision makes it appear that there has been an overpayment of tax, interest at the rate prescribed, computed and compounded daily, or as otherwise prescribed by the Minister, shall be paid or applied from the date the overpayment arose to the date of refund or application on other liability, unless the amount of interest is less than \$1, in which case no interest shall be paid or applied under this section.

13. The Act is amended by adding the following section:

Directors **40a.**—(1) Where a corporation has failed to collect tax or has collected tax and failed to remit the tax or has failed to pay any interest or penalty relating thereto, the directors of the corporation at the time the corporation was required to collect or remit the taxes or to pay the interest or penalty relating thereto, are jointly and severally liable, together with the corporation to pay such amounts.

Exception (2) A director of a corporation is not liable under subsection (1) unless,

- (a) a warrant of execution for the amount of the corporation's liability as described in subsection (1) has been issued under clause 35 (1) (b) and directed to the sheriff of the county or district in which any property of the corporation is located or situate and the warrant has been returned by the sheriff unsatisfied in whole or in part;
- (b) the corporation has commenced liquidation or dissolution proceedings, or has been dissolved, or has lost control or possession of its property in proceedings described in subsection 20 (2), the amount of the corporation's liability described under subsection (1) has been proven or, in respect of proceed-

ings described in subsection 20 (2), a claim for the amount has been made within six months after the earlier of the date of the commencement of the proceedings and the date of dissolution, or in the case of proceedings described in subsection 20 (2), the date when the remaining property of the corporation has been realized and the proceeds distributed; or

- (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy Act* (Canada) and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within six months after the date of the assignment or receiving order.

R.S.C. 1985,
c. B-3

(3) A director of a corporation is not liable for a failure described under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Prudent
director

(4) The Minister may assess any person for any amount payable by the person under this section and, where the Minister sends a notice of assessment, the sections of this Act respecting assessments, objections and appeals apply with such modifications as the circumstances require.

Assessment

(5) Any assessment under subsection (4) of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person last ceased to be a director of the corporation.

Time limit

(6) Where execution referred to in clause (2) (a) has been issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Execution

(7) Where a director of a corporation pays an amount in respect of a corporation's liability described in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings or in respect of which a claim has been made in proceedings described in subsection 20 (2), the director is entitled to any preference that Her Majesty in right of Ontario would have been entitled to had the amount not been so paid and, where a warrant of execution has been issued and directed to the sheriff of the county or district in which any property of the corporation is located or situate, the director is entitled to an assignment of the warrant of execution to the extent of the director's payment, and the Minister is empowered to make the assignment.

Idem

Allocation by
Minister

(8) For the purposes of this section, the Minister may apply any payment or payments made by or on behalf of the corporation under this Act to any of the liabilities described in subsection (1) including penalties and interest relating thereto and any liability for tax payable by the corporation under section 2 including any penalty and interest relating thereto.

14. Subsection 41 (3) of the Act is amended by striking out “three” in the sixth line and substituting “four”.

15.—(1) Subsection 45 (2) of the Act, as amended by the Statutes of Ontario, 1981, chapter 38, section 4, 1983, chapter 27, section 16 and 1986, chapter 1, section 13, is further amended by adding the following clause:

- (l) prescribing circumstances or situations in which no tax is payable upon a transfer of tangible personal property between related persons.

(2) Subsection 45 (3) of the Act, as amended by the Statutes of Ontario, 1982, chapter 36, section 10, 1983, chapter 27, section 16, 1986, chapter 66, section 12 and 1989, chapter 38, section 7, is further amended by adding the following clauses:

- (o) providing for a rebate of tax paid on tangible personal property purchased in Ontario and taken outside Ontario to be used permanently outside Ontario and prescribing the terms and conditions under which the rebate may be made;
- (p) providing for a rebate or partial rebate of the tax paid on transient accommodation by a person who is not a resident of Ontario and prescribing the terms and conditions under which the rebate or partial rebate may be made.

Commence-
ment

16.—(1) Except as provided in subsection (2), this Act comes into force on the day it receives Royal Assent.

Commence-
ment and
application

(2) Sections 1, 2, 3, 5, 6, 9, 10, 11, 12, 13 and 14 and subsection 15 (2),

- (a) come into force on the day Bill C-62 (an Act to amend the *Excise Tax Act* (Canada) and certain other Acts) passed on the 10th day of April, 1990 by the House of Commons of Canada receives Royal Assent; and

- (b) apply in respect of sales made or prices of admission paid, or both, on or after the 1st day of January, 1991.

17. The short title of this Act is the *Retail Sales Tax Amendment Act, 1990*. Short title